

Introduced by Senator Moorlach

February 18, 2016

An act to amend Sections 10006, 10085.5, 10085.6, 10106, 10133.1, 10139, 10147.6, 10148, 10152, 10153, 10158, 10159, 10159.2, 10164, 10167.12, 10171.5, 10177, 10180, 10185, 10211, 10231.2, 10232.25, 10238, and 10451 of, and to add Section 10157.5 to, the Business and Professions Code, relating to real estate and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1253, as introduced, Moorlach. Real estate brokers: limited liability companies.

Existing law, the California Revised Uniform Limited Liability Company Act, authorizes a limited liability company to have any lawful purpose, except as specified. A limited liability company is an entity distinct from its members. Existing law authorizes a limited liability company to render services that may be lawfully rendered only pursuant to a license, certificate, or registration authorized by the Business and Professions Code, the Chiropractic Act, the Osteopathic Act, or the Yacht and Ship Brokers Act, if those provisions authorize a limited liability company to hold that license, certificate, or registration. Existing law prohibits the act from being construed to permit a limited liability company to render professional services, as defined. Under existing law, a limited liability company is a member-managed limited liability company unless the articles of organization. Under existing law, the operating agreement governs, among other things, relations among the members as members and between the members and the limited liability company and the activities of the limited liability company. Existing

law authorizes a written operating agreement to provide for the appointment of officers.

Existing law, the Real Estate Law, provides for the licensure and regulation of real estate brokers by the Real Estate Commissioner, the chief officer of the Bureau of Real Estate. Existing law authorizes a real estate broker license to be issued to an individual or a corporation. Under existing law, when a real estate license is issued to a corporation, if it desires any of its officers other than the specified designated officer to act under its license as a real estate broker, it is required to obtain an additional license to employ each of those additional officers. Under existing law, each officer of a corporation through whom it is licensed to act as a real estate broker is, while so employed under that license, a licensed real estate broker, but licensed only to act as such for and on behalf of the corporation as an officer. Existing law requires applicants for licensure as a real estate broker and real estate broker licensees to pay application, licensure, and renewal fees, which are deposited in the Real Estate Fund, a continuously appropriated fund. Existing law also authorizes the commissioner to take disciplinary action against a real estate licensee, including the imposition of a monetary penalty, which is also deposited in the Real Estate Fund. A willful violation of the law and other related real estate provisions is a crime.

This bill would authorize a limited liability company to be licensed as a real estate broker. When a real estate license is issued to a limited liability company that desires any of its members, managers, or officers other than the designated member, manager, or officer to act under its license as a real estate broker, the bill would require the limited liability company to obtain an additional license to employ each additional member, manager, or officer. The bill would provide that each member, manager, or officer of a limited liability company through whom the company is licensed to act as a real estate broker is, while employed under license, a licensed real estate broker, but licensed only to act as such for and on behalf of the limited liability company as a member, manager, or officer. The bill would make various other conforming changes in this regard.

Because new application, licensure, and renewal fees for limited liability companies would be deposited in the Real Estate Fund, a continuously appropriated fund, the bill would make an appropriation. However, the bill would exclude money in the Real Estate Fund attributable to administrative fines, civil penalties, and criminal penalties imposed by the bureau against a limited liability company broker, or

attributable to cost recovery in actions or settlements, from being continuously appropriated, and would instead make that money subject to appropriation by the Legislature. Because a willful violation of the law and other related real estate provisions by a limited liability company would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10006 of the Business and Professions
2 Code is amended to read:
3 10006. “Person” includes corporation, ~~company~~ company,
4 limited liability company, and firm.
5 SEC. 2. Section 10085.5 of the Business and Professions Code
6 is amended to read:
7 10085.5. (a) It shall be unlawful for any person to claim,
8 demand, charge, receive, collect, or contract for an advance fee
9 (1) for soliciting lenders on behalf of borrowers or performing
10 services for borrowers in connection with loans to be secured
11 directly or collaterally by a lien on real property, before the
12 borrower becomes obligated to complete the loan or, (2) for
13 performing any other activities for which a license is required,
14 unless the person is a licensed real estate broker and has complied
15 with the provisions of this part.
16 (b) This section does not prohibit the acceptance or receipt of
17 an advance fee by any bank, savings association, credit union,
18 industrial loan company, or person acting within the scope of a
19 license issued to that person pursuant to Division 9 (commencing
20 with Section 22000) of the Financial Code, in connection with
21 loans to be secured directly or collaterally by a lien on real
22 property. This section does not apply to charges made by title
23 insurers and controlled escrow companies pursuant to Chapter 1

1 (commencing with Section 12340) of Part 6 of Division 2 of the
2 Insurance Code.

3 (c) A violation of this section is a public offense punishable by
4 a fine not exceeding ten thousand dollars (\$10,000), by
5 imprisonment in the county jail for a term not to exceed six months,
6 or by both that fine and imprisonment, or if by a corporation *or*
7 *limited liability company*, the violation is punishable by a fine not
8 exceeding fifty thousand dollars (\$50,000).

9 SEC. 3. Section 10085.6 of the Business and Professions Code
10 is amended to read:

11 10085.6. (a) Notwithstanding any other provision of law, it
12 shall be unlawful for any licensee who negotiates, attempts to
13 negotiate, arranges, attempts to arrange, or otherwise offers to
14 perform a mortgage loan modification or other form of mortgage
15 loan forbearance for a fee or other compensation paid by the
16 borrower, to do any of the following:

17 (1) Claim, demand, charge, collect, or receive any compensation
18 until after the licensee has fully performed each and every service
19 the licensee contracted to perform or represented that he, she, or
20 it would perform.

21 (2) Take any wage assignment, any lien of any type on real or
22 personal property, or other security to secure the payment of
23 compensation.

24 (3) Take any power of attorney from the borrower for any
25 purpose.

26 (b) A violation of this section by a natural person who is a
27 licensee is a public offense punishable by a fine not exceeding ten
28 thousand dollars (\$10,000), by imprisonment in the county jail for
29 a term not to exceed one year, or by both that fine and
30 imprisonment, or if by a corporation *or limited liability*
31 *corporation*, the violation is punishable by a fine not exceeding
32 fifty thousand dollars (\$50,000). These penalties are cumulative
33 to any other remedies or penalties provided by law.

34 (c) This section shall apply only to mortgages and deeds of trust
35 secured by residential real property containing four or fewer
36 dwelling units.

37 SEC. 4. Section 10106 of the Business and Professions Code
38 is amended to read:

39 10106. (a) Except as otherwise provided by law, in any order
40 issued in resolution of a disciplinary proceeding before the

1 department, the commissioner may request the administrative law
2 judge to direct a licensee found to have committed a violation of
3 this part to pay a sum not to exceed the reasonable costs of the
4 investigation and enforcement of the case.

5 (b) In the case of a disciplined licensee that is a ~~corporation~~
6 *corporation, a limited liability company*, or a partnership, the
7 order may be made against the licensed corporate ~~entity~~ *entity*,
8 *licensed limited liability company*, or licensed partnership.

9 (c) A certified copy of the actual costs, or a good faith estimate
10 of costs where actual costs are not available, signed by the
11 commissioner or the commissioner's designated representative,
12 shall be prima facie evidence of reasonable costs of investigation
13 and prosecution of the case. The costs shall include the amount of
14 investigative and enforcement costs up to the date of the hearing,
15 including, but not limited to, charges imposed by the Attorney
16 General.

17 (d) The administrative law judge shall make a proposed finding
18 of the amount of reasonable costs of investigation and prosecution
19 of the case when requested pursuant to subdivision (a). The finding
20 of the administrative law judge with regard to costs shall not be
21 reviewable by the commissioner to increase the cost award. The
22 commissioner may reduce or eliminate the cost award, or remand
23 to the administrative law judge where the proposed decision fails
24 to make a finding on costs requested pursuant to subdivision (a).

25 (e) Where an order for recovery of costs is made and timely
26 payment is not made as directed in the commissioner's decision,
27 the commissioner may enforce the order for repayment in any
28 appropriate court. This right of enforcement shall be in addition
29 to any other rights the commissioner may have as to any licensee
30 to pay costs.

31 (f) In any action for recovery of costs, proof of the
32 commissioner's decision shall be conclusive proof of the validity
33 of the order of payment and the terms for payment.

34 (g) (1) Except as provided in paragraph (2), the department
35 shall not renew or reinstate the license of any licensee who has
36 failed to pay all of the costs ordered under this section.

37 (2) The department may, in its discretion, conditionally renew
38 or reinstate for a maximum of one year the license of any licensee
39 who demonstrates financial hardship and who enters into a formal

1 agreement with the department to reimburse the department within
2 that one-year period for the unpaid costs.

3 (h) All costs recovered under this section shall be considered a
4 reimbursement for costs incurred and shall be deposited in the
5 Real Estate Fund to be available, notwithstanding Section 10451,
6 upon appropriation by the Legislature.

7 (i) Nothing in this section shall preclude the department from
8 including the recovery of the costs of investigation and enforcement
9 of a case in any stipulated settlement.

10 SEC. 5. Section 10133.1 of the Business and Professions Code
11 is amended to read:

12 10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section
13 10131.1, Article 5 (commencing with Section 10230), and Article
14 7 (commencing with Section 10240) of this code and Section
15 1695.13 of the Civil Code do not apply to any of the following:

16 (1) Any person or employee thereof doing business under any
17 law of this state, any other state, or the United States relating to
18 banks, trust companies, savings and loan associations, industrial
19 loan companies, pension trusts, credit unions, or insurance
20 companies.

21 (2) Any nonprofit cooperative association organized under
22 Chapter 1 (commencing with Section 54001) of Division 20 of the
23 Food and Agricultural Code, in loaning or advancing money in
24 connection with any activity mentioned therein.

25 (3) Any corporation, association, syndicate, joint stock company,
26 or partnership engaged exclusively in the business of marketing
27 agricultural, horticultural, viticultural, dairy, livestock, poultry, or
28 bee products on a cooperative nonprofit basis, in loaning or
29 advancing money to the members thereof or in connection with
30 any business of that type.

31 (4) Any corporation securing money or credit from any federal
32 intermediate credit bank organized and existing pursuant to the
33 provisions of an act of Congress entitled the "Agricultural Credits
34 Act of 1923," in loaning or advancing money or credit so secured.

35 (5) Any person licensed to practice law in this state, not actively
36 and principally engaged in the business of negotiating loans secured
37 by real property, when that person renders services in the course
38 of his or her practice as an attorney at law, and the disbursements
39 of that person, whether paid by the borrower or other person, are
40 not charges or costs and expenses regulated by or subject to the

1 limitations of Article 7 (commencing with Section 10240), and
2 the fees and disbursements are not shared, directly or indirectly,
3 with the person negotiating the loan or the lender.

4 (6) Any person licensed as a finance lender when acting under
5 the authority of that license.

6 (7) Any cemetery authority as defined by Section 7018 of the
7 Health and Safety Code, that is authorized to do business in this
8 state or its authorized agent.

9 (8) Any person authorized in writing by a savings institution to
10 act as an agent of that institution, as authorized by Section 6520
11 of the Financial Code or comparable authority of the Office of
12 Thrift Supervision of the United States Department of the Treasury
13 by its regulations, when acting under the authority of that written
14 authorization.

15 (9) Any person who is licensed as a securities broker or
16 securities dealer under any law of this state, or of the United States,
17 or any employee, officer, or agent of that person, if that person,
18 employee, officer, or agent is acting within the scope of authority
19 granted by that license in connection with a transaction involving
20 the offer, sale, purchase, or exchange of a security representing an
21 ownership interest in a pool of promissory notes secured directly
22 or indirectly by liens on real property, which transaction is subject
23 to any law of this state or the United States regulating the offer or
24 sale of securities.

25 (10) Any person licensed as a residential mortgage lender or
26 servicer when acting under the authority of that license.

27 (11) Any organization that has been approved by the United
28 States Department of Housing and Urban Development pursuant
29 to Section 106(a)(1)(iii) of the federal Housing and Urban
30 Development Act of 1968 (12 U.S.C. Sec. 1701x), to provide
31 counseling services, or an employee of such an organization, when
32 those services are provided at no cost to the borrower and are in
33 connection with the modification of the terms of a loan secured
34 directly or collaterally by a lien on residential real property
35 containing four or fewer dwelling units.

36 (b) Persons described in paragraph (1), (2), or (3), as follows,
37 are exempt from the provisions of subdivisions (d) and (e) of
38 Section 10131 or Section 10131.1 with respect to the collection
39 of payments or performance of services for lenders or on notes of

1 owners in connection with loans secured directly or collaterally
2 by liens on real property:

3 (1) The person makes collections on 10 or less of those loans,
4 or in amounts of forty thousand dollars (\$40,000) or less, in any
5 calendar year.

6 (2) The person is a corporation licensed as an escrow agent
7 under Division 6 (commencing with Section 17000) of the
8 Financial Code and the payments are deposited and maintained in
9 the escrow agent's trust account.

10 (3) An employee of a real estate broker who is acting as the
11 agent of a person described in paragraph (4) of subdivision (b) of
12 Section 10232.4.

13 For purposes of this subdivision, performance of services does
14 not include soliciting borrowers, lenders, or purchasers for, or
15 negotiating, loans secured directly or collaterally by a lien on real
16 property.

17 (c) (1) Subdivision (d) of Section 10131 does not apply to an
18 employee of a real estate broker who, on behalf of the broker,
19 assists the broker in meeting the broker's obligations to its
20 customers in residential mortgage loan transactions, as defined in
21 Section 50003 of the Financial Code, where the lender is an
22 institutional lender, as defined in Section 50003 of the Financial
23 Code, provided the employee does not participate in any
24 negotiations occurring between the principals.

25 (2) A broker shall exercise reasonable supervision and control
26 over the activities of nonlicensed employees acting under this
27 subdivision, and shall comply with Section 10163 for each location
28 where the nonlicensed persons are employed.

29 This section does not restrict the ability of the commissioner to
30 discipline a broker or corporate broker licensee or its designated
31 officer, or both the corporate broker licensee and its designated
32 officer, *or a limited liability broker licensee or its designated*
33 *member, officer, or manager, or both the limited liability broker*
34 *licensee and its designated member, officer, or manager*, for
35 misconduct of a nonlicensed employee acting under this
36 subdivision, or, pursuant to Section 10080, to adopt, amend, or
37 repeal rules or regulations governing the employment or
38 supervision of an employee who is a nonlicensed person as
39 described in this subdivision.

1 SEC. 6. Section 10139 of the Business and Professions Code
2 is amended to read:

3 10139. Any person acting as a real estate broker, real estate
4 salesperson, or mortgage loan originator without a license or license
5 endorsement, or who advertises using words indicating that he or
6 she is a real estate broker, real estate salesperson, or mortgage loan
7 originator without being so licensed or without having obtained a
8 license endorsement, shall be guilty of a public offense punishable
9 by a fine not exceeding twenty thousand dollars (\$20,000), or by
10 imprisonment in the county jail for a term not to exceed six months,
11 or by both fine and imprisonment; or if a corporation *or limited*
12 *liability company*, be punished by a fine not exceeding sixty
13 thousand dollars (\$60,000). If a Real Estate Fraud Prosecution
14 Trust Fund, as described in Section 27388 of the Government
15 Code, exists in the county where a ~~person or corporation~~ *person,*
16 *corporation, or limited liability company* is convicted, any fine
17 collected from the person in excess of ten thousand dollars
18 (\$10,000) or any fine collected from the corporation *or limited*
19 *liability company* in excess of fifty thousand dollars (\$50,000)
20 shall be deposited in that Real Estate Fraud Prosecution Trust
21 Fund.

22 SEC. 7. Section 10147.6 of the Business and Professions Code
23 is amended to read:

24 10147.6. (a) Any licensee who negotiates, attempts to
25 negotiate, arranges, attempts to arrange, or otherwise offers to
26 perform a mortgage loan modification or other form of mortgage
27 loan forbearance for a fee or other form of compensation paid by
28 the borrower, shall provide the following to the borrower, as a
29 separate statement, in not less than 14-point bold type, prior to
30 entering into any fee agreement with the borrower:

31
32 It is not necessary to pay a third party to arrange for a loan
33 modification or other form of forbearance from your mortgage
34 lender or servicer. You may call your lender directly to ask for a
35 change in your loan terms. Nonprofit housing counseling agencies
36 also offer these and other forms of borrower assistance free of
37 charge. A list of nonprofit housing counseling agencies approved
38 by the United States Department of
39

1 Housing and Urban Development (HUD) is available from your
2 local HUD office or by visiting www.hud.gov.

3 (b) If loan modification or other mortgage loan forbearance
4 services are offered or negotiated in one of the languages set forth
5 in Section 1632 of the Civil Code, a translated copy of the
6 statement in subdivision (a) shall be provided to the borrower in
7 that foreign language.

8 (c) A violation of this section by a natural person who is a
9 licensee is a public offense punishable by a fine not exceeding ten
10 thousand dollars (\$10,000), by imprisonment in the county jail for
11 a term not to exceed one year, or by both that fine and
12 imprisonment, or if by a corporation *or limited liability company*,
13 the violation is punishable by a fine not exceeding fifty thousand
14 dollars (\$50,000). These penalties are cumulative to any other
15 remedies or penalties provided by law.

16 (d) This section shall apply only to mortgages and deeds of trust
17 secured by residential real property containing four or fewer
18 dwelling units.

19 SEC. 8. Section 10148 of the Business and Professions Code
20 is amended to read:

21 10148. (a) A licensed real estate broker shall retain for three
22 years copies of all listings, deposit receipts, canceled checks, trust
23 records, and other documents executed by him or her or obtained
24 by him or her in connection with any transactions for which a real
25 estate broker license is required. The retention period shall run
26 from the date of the closing of the transaction or from the date of
27 the listing if the transaction is not consummated. After notice, the
28 books, accounts, and records shall be made available for
29 examination, inspection, and copying by the commissioner or his
30 or her designated representative during regular business hours;
31 and shall, upon the appearance of sufficient cause, be subject to
32 audit without further notice, except that the audit shall not be
33 harassing in nature. This subdivision shall not be construed to
34 require a licensed real estate broker to retain electronic messages
35 of an ephemeral nature, as described in subdivision (d) of Section
36 1624 of the Civil Code.

37 (b) The commissioner shall charge a real estate broker for the
38 cost of any audit, if the commissioner has found, in a final desist
39 and refrain order issued under Section 10086 or in a final decision
40 following a disciplinary hearing held in accordance with Chapter

5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

(d) The commissioner may maintain an action for the recovery of the cost of an audit in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

(e) The bureau may suspend or revoke the license of any real estate broker, real estate salesperson, *limited liability company*, or corporation licensed as a real estate broker, if the real estate broker, real estate salesperson, or any director, officer, employee, *member*, *manager*, or agent of the *limited liability company* or corporation licensed as a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books, papers, writings, documents, or tangible objects that are required to be maintained by this section or that have been sought in connection with an investigation, audit, or examination of a real estate licensee by the commissioner.

SEC. 9. Section 10152 of the Business and Professions Code is amended to read:

10152. (a) The commissioner may require any other proof he or she may deem advisable concerning the honesty and truthfulness of an applicant for a real estate license or license examination, or of the *members*, *managers*, officers, directors, or persons owning 10 percent or more of the stock, of a corporation or *limited liability company* making application therefor, before authorizing the issuance of a real estate license. For this purpose the commissioner may call a hearing in accordance with this part relating to hearings. To assist in his or her determination the commissioner shall require every original applicant to be fingerprinted prior to issuing a license. The commissioner may require the fingerprints to be submitted either with the application to take the license examination or with the application for a real estate license.

1 (b) The commissioner shall require a person who submits a
2 petition for reinstatement of his or her license or reduction of a
3 penalty pursuant to Section 11522 of the Government Code, in
4 addition to meeting any other requirements imposed for purposes
5 of the reinstatement or penalty reduction, to submit his or her
6 fingerprints with the petition.

7 SEC. 10. Section 10153 of the Business and Professions Code
8 is amended to read:

9 10153. In addition to the proof of honesty and truthfulness
10 required of any applicant for a real estate license, the commissioner
11 shall ascertain by written examination that the applicant, and in
12 case of a corporation *or limited liability company* applicant for a
13 real estate broker's license that each officer, *member, manager,*
14 or agent thereof through whom it proposes to act as a real estate
15 licensee, has all of the following:

16 (a) An appropriate knowledge of the English language, including
17 reading, writing, and spelling and of arithmetical computations
18 common to real estate and business opportunity practices.

19 (b) An understanding of the principles of real estate and business
20 opportunity conveyancing, the general purposes and general legal
21 effect of agency contracts, deposit receipts, deeds, mortgages,
22 deeds of trust, chattel mortgages, bills of sale, land contracts of
23 sale and leases, and of the principles of business and land
24 economics and appraisals.

25 (c) A general and fair understanding of the obligations between
26 principal and agent, of the principles of real estate and business
27 opportunity practice and the canons of business ethics pertaining
28 thereto, of the provisions of this part, of Chapter 1 (commencing
29 with Section 11000) of Part 2, and of the regulations of the Real
30 Estate Commissioner as contained in Title 10 of the California
31 Administrative Code.

32 SEC. 11. Section 10157.5 is added to the Business and
33 Professions Code, to read:

34 10157.5. Notwithstanding any other law, a limited liability
35 company may be licensed as a real estate broker.

36 SEC. 12. Section 10158 of the Business and Professions Code
37 is amended to read:

38 10158. (a) When a real estate license is issued to a
39 corporation, if it desires any of its officers other than the officer
40 designated by it pursuant to Section 10211, to act under its license

1 as a real estate broker, it shall procure an additional license to so
2 employ each of such additional officers.

3 *(b) When a real estate license is issued to a limited liability*
4 *company, if it desires any of its members, managers, or officers*
5 *other than the member, manager, or officer designated by it*
6 *pursuant to Section 10211 to act under its license as a real estate*
7 *broker, it shall procure an additional license to employ each*
8 *additional member, manager, or officer.*

9 SEC. 13. Section 10159 of the Business and Professions Code
10 is amended to read:

11 10159. (a) Each officer of a corporation through whom it is
12 licensed to act as a real estate broker is, while so employed under
13 such license, a licensed real estate broker, but licensed only to act
14 as such for and on behalf of the corporation as an officer.

15 *(b) Each member, manager, or officer of a limited liability*
16 *company through whom that company is licensed to act as a real*
17 *estate broker is, while employed under that license, a licensed real*
18 *estate broker, but licensed only to act as such for and on behalf*
19 *of the limited liability company as a member, manager, or officer.*

20 SEC. 14. Section 10159.2 of the Business and Professions
21 Code is amended to read:

22 10159.2. (a) (1) The officer designated by a corporate broker
23 licensee pursuant to Section 10211 shall be responsible for the
24 supervision and control of the activities conducted on behalf of
25 the corporation by its officers and employees as necessary to secure
26 full compliance with the provisions of this division, including the
27 supervision of salespersons licensed to the corporation in the
28 performance of acts for which a real estate license is required.

29 *(2) The member, manager, or officer designated by a limited*
30 *liability company broker licensee pursuant to Section 10211 shall*
31 *be responsible for the supervision and control of the activities*
32 *conducted on behalf of the limited liability company by its*
33 *managers, members, officers, and employees as necessary to secure*
34 *full compliance with the provisions of this division, including the*
35 *supervision of salespersons licensed to the limited liability company*
36 *in the performance of acts for which a real estate license is*
37 *required.*

38 (b) (1) A corporate broker licensee that has procured additional
39 licenses in accordance with Section 10158 through officers other
40 than the officer designated pursuant to Section 10211 may, by

1 appropriate resolution of its board of directors, assign supervisory
2 responsibility over salespersons licensed to the corporation to its
3 broker-officers.

4 *(2) A limited liability company broker licensee that has procured*
5 *additional licenses in accordance with Section 10158 through*
6 *members, managers, or officers other than the member, manager,*
7 *or officer designated pursuant to Section 10211 may, by*
8 *appropriate resolution of the members, assign supervisory*
9 *responsibility over salespersons licensed to the limited liability*
10 *company to its broker members, managers, or officers.*

11 (c) (1) A certified copy of any resolution of the board of
12 directors assigning supervisory responsibility over real estate
13 salespersons licensed to the corporation shall be filed with the ~~Real~~
14 ~~Estate Commissioner~~ commissioner within five days after the
15 adoption or modification thereof.

16 *(2) A certified copy of any resolution of the members assigning*
17 *supervisory responsibility over real estate salespersons licensed*
18 *to the limited liability company shall be filed with the commissioner*
19 *within five days after the adoption or modification thereof.*

20 SEC. 15. Section 10164 of the Business and Professions Code
21 is amended to read:

22 10164. (a) An employing ~~broker~~ broker, limited liability
23 company designated broker member, manager, or officer, or
24 corporate designated broker officer may appoint a licensee as a
25 manager of a branch office or division of the employing ~~broker's~~
26 *broker's, employing limited liability company designated member,*
27 *manager, or officer's,* or employing corporate designated broker
28 officer's real estate business and delegate to the appointed manager
29 the responsibility to oversee day-to-day operations, supervise the
30 licensed activities of licensees, and supervise clerical staff
31 employed in the branch office or division.

32 (b) Notwithstanding subdivision (a), nothing in this section shall
33 be construed to limit the responsibilities of an employing ~~broker~~
34 *broker, limited liability company designated broker member,*
35 *manager, or officer,* or a corporate designated broker officer
36 pursuant to subdivision (h) of Section 10177. A licensee accepting
37 appointment as a manager shall be subject to disciplinary action
38 pursuant to Section 10165 for failure to properly supervise licensed
39 activity pursuant to subdivision (a).

(c) Appointment of a manager shall only be made by means of a written contract in which the manager accepts the delegated responsibility. The appointing employing ~~broker~~ *broker, limited liability company designated broker member, manager, or officer,* or corporate designated broker officer shall retain a copy of the contract and send a notice to the ~~department~~, *bureau*, in a form approved by the commissioner, identifying the appointed manager and the branch office or division the manager is appointed to supervise.

(d) A licensee shall not be appointed as a manager if any of the following apply:

(1) The licensee holds a restricted license.

(2) The licensee is or has been subject to an order of debarment.

(3) The licensee is a salesperson with less than two years of full-time real estate experience within five years preceding the appointment.

(e) Whenever an appointment of a branch manager is terminated or changed, the employing ~~broker~~ *broker, limited liability company designated broker member, manager, or officer,* or corporate designated broker officer shall immediately notify the commissioner thereof in writing.

~~(f) This section shall become operative on July 1, 2012.~~

SEC. 16. Section 10167.12 of the Business and Professions Code is amended to read:

10167.12. (a) The commissioner may suspend, deny, or revoke the license of a licensee or the license of the licensee to operate at one or more locations for either of the following:

(1) A violation of this article by a licensee or by an employee or agent, including a designated agent, of the licensee.

(2) A conviction of a licensee, or a designated agent, or of ~~an~~ *a member, manager,* officer, director, or owner of 25 percent or more of the shares of a *limited liability company* or corporate licensee for a crime which is substantially related to the qualifications, functions, or duties of a prepaid rental listing service licensee.

(b) For the purpose of determining whether grounds exist for suspending, denying, or revoking the license of a licensee, the commissioner shall hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 17. Section 10171.5 of the Business and Professions Code is amended to read:

10171.5. A person who is licensed as a real estate broker only as ~~an~~ a member, manager, or officer of a *limited liability company* or corporate broker pursuant to Section 10158 or 10211 shall not be eligible for the renewal of such license nor for the issuance of a license in an individual capacity or as ~~an~~ a member, manager, or officer of a *limited liability company* or corporate broker licensed pursuant to Section 10158 or 10211, unless and until such person has completed the continuing education requirements of this article.

SEC. 18. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation *or limited liability company*, delay the renewal of a license of a corporation *or limited liability company*, or deny the issuance of a license to a corporation *or limited liability company*, if ~~an~~ a member, manager, officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material

1 false statement or representation concerning his or her designation
2 or certification of special education, credential, trade organization
3 membership, or business, or concerning a business opportunity or
4 a land or subdivision, as defined in Chapter 1 (commencing with
5 Section 11000) of Part 2, offered for sale.

6 (d) Willfully disregarded or violated the Real Estate Law (Part
7 1 (commencing with Section 10000)) or Chapter 1 (commencing
8 with Section 11000) of Part 2 or the rules and regulations of the
9 commissioner for the administration and enforcement of the Real
10 Estate Law and Chapter 1 (commencing with Section 11000) of
11 Part 2.

12 (e) Willfully used the term “realtor” or a trade name or insignia
13 of membership in a real estate organization of which the licensee
14 is not a member.

15 (f) Acted or conducted himself or herself in a manner that would
16 have warranted the denial of his or her application for a real estate
17 license, or either had a license denied or had a license issued by
18 another agency of this state, another state, or the federal
19 government revoked or suspended for acts that, if done by a real
20 estate licensee, would be grounds for the suspension or revocation
21 of a California real estate license, if the action of denial, revocation,
22 or suspension by the other agency or entity was taken only after
23 giving the licensee or applicant fair notice of the charges, an
24 opportunity for a hearing, and other due process protections
25 comparable to the Administrative Procedure Act (Chapter 3.5
26 (commencing with Section 11340), Chapter 4 (commencing with
27 Section 11370), and Chapter 5 (commencing with Section 11500)
28 of Part 1 of Division 3 of Title 2 of the Government Code), and
29 only upon an express finding of a violation of law by the agency
30 or entity.

31 (g) Demonstrated negligence or incompetence in performing
32 an act for which he or she is required to hold a license.

33 (h) As a broker licensee, failed to exercise reasonable
34 supervision over the activities of his or her salespersons, or, as the
35 officer designated by a corporate broker licensee, *or, as the*
36 *member, manager, or officer designated by a limited liability*
37 *company broker licensee*, failed to exercise reasonable supervision
38 and control of the activities of the corporation *or limited liability*
39 *company* for which a real estate license is required.

1 (i) Used his or her employment by a governmental agency in a
2 capacity giving access to records, other than public records, in a
3 manner that violates the confidential nature of the records.

4 (j) Engaged in any other conduct, whether of the same or a
5 different character than specified in this section, that constitutes
6 fraud or dishonest dealing.

7 (k) Violated any of the terms, conditions, restrictions, and
8 limitations contained in an order granting a restricted license.

9 (l) (1) Solicited or induced the sale, lease, or listing for sale or
10 lease of residential property on the ground, wholly or in part, of
11 loss of value, increase in crime, or decline of the quality of the
12 schools due to the present or prospective entry into the
13 neighborhood of a person or persons having a characteristic listed
14 in subdivision (a) or (d) of Section 12955 of the Government Code,
15 as those characteristics are defined in Sections 12926 and 12926.1,
16 subdivision (m) and paragraph (1) of subdivision (p) of Section
17 12955, and Section 12955.2 of the Government Code.

18 (2) Notwithstanding paragraph (1), with respect to familial
19 status, paragraph (1) shall not be construed to apply to housing for
20 older persons, as defined in Section 12955.9 of the Government
21 Code. With respect to familial status, nothing in paragraph (1)
22 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
23 and 799.5 of the Civil Code, relating to housing for senior citizens.
24 Subdivision (d) of Section 51 and Section 4760 of the Civil Code
25 and subdivisions (n), (o), and (p) of Section 12955 of the
26 Government Code shall apply to paragraph (1).

27 (m) Violated the Franchise Investment Law (Division 5
28 (commencing with Section 31000) of Title 4 of the Corporations
29 Code) or regulations of the Commissioner of Corporations
30 pertaining thereto.

31 (n) Violated the Corporate Securities Law of 1968 (Division 1
32 (commencing with Section 25000) of Title 4 of the Corporations
33 Code) or the regulations of the Commissioner of Corporations
34 pertaining thereto.

35 (o) Failed to disclose to the buyer of real property, in a
36 transaction in which the licensee is an agent for the buyer, the
37 nature and extent of a licensee's direct or indirect ownership
38 interest in that real property. The direct or indirect ownership
39 interest in the property by a person related to the licensee by blood
40 or marriage, by an entity in which the licensee has an ownership

1 interest, or by any other person with whom the licensee has a
2 special relationship shall be disclosed to the buyer.

3 (p) Violated Article 6 (commencing with Section 10237).

4 (q) Violated or failed to comply with Chapter 2 (commencing
5 with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil
6 Code, related to mortgages.

7 If a real estate broker that is a corporation *or limited liability*
8 *company* has not done any of the foregoing acts, either directly or
9 through its *members, managers, employees, agents, officers,*
10 *directors, or persons owning or controlling 10 percent or more of*
11 *the corporation's stock, the commissioner may not deny the*
12 *issuance or delay the renewal of a real estate license to, or suspend*
13 *or revoke the real estate license of, the corporation or limited*
14 *liability company, provided that any offending officer, director,*
15 *or stockholder, who has done any of the foregoing acts individually*
16 *and not on behalf of the corporation or limited liability company,*
17 *has been completely disassociated from any affiliation or ownership*
18 *in the corporation or limited liability company. A decision by the*
19 *commissioner to delay the renewal of a real estate license shall*
20 *toll the expiration of that license until the results of any pending*
21 *disciplinary actions against that licensee are final, or until the*
22 *licensee voluntarily surrenders his, her, or its license, whichever*
23 *is earlier.*

24 ~~This section shall become operative on July 1, 2012.~~

25 SEC. 19. Section 10180 of the Business and Professions Code
26 is amended to read:

27 10180. The commissioner may deny, suspend or revoke the
28 real estate license of a corporation *or limited liability company* as
29 to any ~~officer or agent~~, *member, manager, officer, or agent* acting
30 under its license without revoking the license of the corporation
31 *or limited liability company.*

32 SEC. 20. Section 10185 of the Business and Professions Code
33 is amended to read:

34 10185. Any person, including *members, managers, officers,*
35 *directors, agents or employees of corporations or limited liability*
36 *companies, who willfully violates or knowingly participates in the*
37 *violation of this division shall be guilty of a misdemeanor*
38 *punishable by a fine not exceeding ten thousand dollars (\$10,000),*
39 *or by imprisonment in the county jail not exceeding six months,*
40 *or by a fine and imprisonment.*

1 SEC. 21. Section 10211 of the Business and Professions Code
2 is amended to read:

3 10211. (a) If the licensee is a corporation, the license issued
4 to it entitles one officer thereof, on behalf of the corporation, to
5 engage in the business of real estate broker without the payment
6 of any further fee, such officer to be designated in the application
7 of the corporation for a license. For each officer other than the
8 officer so designated, through whom it engages in the business of
9 real estate broker, the appropriate original or renewal fee is to be
10 paid in addition to the fee paid by the corporation.

11 (b) *If the licensee is a limited liability company, the license*
12 *issued to it entitles one member, manager, or officer thereof, on*
13 *behalf of the limited liability company, to engage in the business*
14 *of real estate broker without the payment of any further fee, such*
15 *member, manager, or officer to be designated in the application*
16 *of the limited liability company for a license. For each member,*
17 *manager, or officer other than the member, manager, or officer*
18 *so designated, through whom it engages in the business of real*
19 *estate broker, the appropriate original or renewal fee is to be paid*
20 *in addition to the fee paid by the limited liability company.*

21 SEC. 22. Section 10231.2 of the Business and Professions
22 Code is amended to read:

23 10231.2. (a) A real estate broker who, through express or
24 implied representations that the broker or any salesperson acting
25 on the broker's behalf is engaging in acts for which a real estate
26 license is required by subdivision (d) or (e) of Section 10131,
27 proposes to solicit and accept funds, or to cause the solicitation
28 and acceptance of funds, to be applied to a purchase or loan
29 transaction in which the broker will directly or indirectly obtain
30 the use or benefit of the funds other than for commissions, fees,
31 and costs and expenses as provided by law for the broker's services
32 as an agent, shall, prior to the making of any representation,
33 solicitation, or presentation of the statement described in
34 subdivision (b), submit the following to the Bureau of Real Estate:

35 (1) A true copy of the statement described in subdivision (b)
36 complete except for the signature of the prospective lender or
37 purchaser.

38 (2) A statement that the submittal is being made to the bureau
39 pursuant to Section 10231.2.

(b) A broker making a solicitation pursuant to subdivision (a) shall deliver, or cause to be delivered, to the person solicited, the applicable completed statement described in Section 10232.5 not less than 24 hours before the earlier of the acceptance of any funds from that person by or on behalf of the broker or the execution of any instrument obligating the person to make the loan or purchase. The statement shall be signed by the prospective lender or purchaser and by the real estate broker or, on the broker's behalf, by a real estate salesperson licensed to the broker. When so executed, an exact copy of the executed statement shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of four years.

(c) None of the provisions of subdivision (a) or (b) shall apply in the case of an offering of a security authorized pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(d) (1) In the case of a solicitation by a corporate real estate broker, the provisions of subdivisions (a) and (b) shall apply if the funds solicited are intended for the direct or indirect use or benefit of an officer or director of the corporation or of a person with a 10-percent or greater ownership interest in the corporation.

(2) *In the case of a solicitation by a limited liability company real estate broker, subdivisions (a) and (b) shall apply if the funds solicited are intended for the direct or indirect use or benefit of a member, manager, or officer of the limited liability company or of a person with a 10-percent or greater ownership interest in the limited liability company.*

SEC. 23. Section 10232.25 of the Business and Professions Code is amended to read:

10232.25. (a) A real estate broker who meets the criteria of subdivision (a) of Section 10232 shall, within 30 days after the end of each of the first three fiscal quarters of the broker's fiscal year, or within any additional time as the Real Estate Commissioner may allow for good cause, file with the commissioner a trust funds status report as of the last day of the fiscal quarter which shall include the following:

(1) A representation that the form and content of the trust account records of the broker are in compliance with the regulations of the commissioner.

1 (2) A representation that the broker's trust fund bank account
2 is maintained in compliance with the regulations of the
3 commissioner.

4 (3) A statement of the broker's aggregate accountability for
5 trust funds.

6 (4) A report of trust funds in the broker's custody consisting of
7 the trust account bank statements as of the bank's accounting date
8 immediately preceding the end of the fiscal quarter and a schedule
9 of withdrawals and deposits adjusting the account to its true balance
10 as of the end of the fiscal quarter.

11 (5) A statement explaining any difference in amount between
12 the broker's total accountability under paragraph (3) above and
13 the adjusted trust account bank balance under paragraph (4) above.

14 (b) Each report made pursuant to subdivision (a) shall include
15 the following:

16 (1) The name, address, and position or capacity of the person
17 who prepared the report.

18 (2) A declaration under penalty of perjury by the broker that
19 the information and representations in the report are true, complete,
20 and correct to the best of the broker's knowledge and belief. The
21 declaration in a report submitted on behalf of a corporate broker
22 shall be signed by a broker-officer through whom the corporation
23 is licensed as a real estate broker and by the chief executive officer
24 of the corporation if he or she is not the signing broker-officer.
25 *The declaration in a report submitted on behalf of a limited liability*
26 *company broker shall be signed by a broker member, manager,*
27 *or officer through whom the limited liability company is licensed*
28 *as a real estate broker and by the chief executive officer, if any,*
29 *of the limited liability company if he or she is not the signing broker*
30 *member, manager, or officer.*

31 (c) If a broker fails to file a report required under subdivision
32 (a) within the time permitted, the commissioner may cause an
33 examination and report to be made and may charge the broker one
34 and one-half times the cost of making the examination and report.
35 In determining the hourly cost incurred by the commissioner for
36 conducting an examination and preparing the report, the
37 commissioner may use the estimated average hourly cost for all
38 department audit staff performing audits of real estate brokers. If
39 a broker fails to pay the above amount within 60 days of the
40 mailing of a notice of billing, the commissioner may suspend the

1 broker's license or deny renewal of the broker's license. The
2 suspension or denial shall remain in effect until the above amount
3 is paid or the broker's right to renew a license has expired. The
4 commissioner may maintain an action for the recovery of the above
5 amount in any court of competent jurisdiction.

6 (d) A broker who meets the criteria of Section 10232, but who,
7 in carrying on the activities described in subdivisions (d) and (e)
8 of Section 10131, did not during a fiscal quarter, accept for the
9 benefit of a person to whom the broker is trustee, any payment or
10 remittance in a form convertible to cash by the broker, need not
11 comply with the provisions of subdivision (a). In lieu thereof, the
12 broker shall submit to the commissioner within 30 days after the
13 end of the fiscal quarter or within any additional time as the
14 commissioner may allow for good cause, a statement under penalty
15 of perjury on a form provided by the department attesting to the
16 fact that the broker did not receive any trust funds in cash or
17 convertible to cash during the fiscal quarter.

18 (e) Any real estate broker who engages in any of the activities
19 specified in subdivision (d) or (e) of Section 10131, but who is not
20 required by this section to file trust funds status reports with the
21 commissioner and who is not exempt therefrom under subdivision
22 (d), shall complete trust funds status reports in accordance with
23 either (1) the requirements of subdivisions (a) and (b) applicable
24 to trust funds status reports filed with the commissioner, or (2) the
25 requirements established by the lender or note owner, if the lender
26 or note owner does all of the following: (i) requires monthly
27 reconciliations of trust account balances; (ii) requires annual,
28 CPA-audited financial statements; and (iii) maintains a contractual
29 right to audit the trust accounts held by the broker on behalf of the
30 lender or note owner.

31 The broker shall retain all trust funds status reports prepared
32 under this subdivision on file at the broker's offices, where they
33 shall be subject to inspection by representatives of the
34 commissioner upon 24 hours' notice.

35 SEC. 24. Section 10238 of the Business and Professions Code
36 is amended to read:

37 10238. (a) A notice in the following form and containing the
38 following information shall be filed with the commissioner within
39 30 days after the first transaction and within 30 days of any material
40 change in the information required in the notice:

- 1 TO: Real Estate Commissioner
2 Mortgage Loan Section
3 1651 Exposition Boulevard
4 Sacramento, CA 95815
5 This notice is filed pursuant to Sections 10237 and 10238 of the Business and
6 Professions Code.
7 () Original Notice () Amended Notice
8 1. Name of Broker conducting transaction under Section 10237:
9 _____
10
11 2. Broker license identification number: _____
12
13 3. List the month the fiscal year ends: _____
14
15 4. Broker's telephone number: _____
16
17 5. Firm name (if different from "1"):
18 _____
19
20 6. Street address (main location):
21 _____
22 # and Street City State ZIP Code
23
24 7. Mailing address (if different from "6"):
25 _____
26
27 8. Servicing agent: Identify by name, address, and telephone number the
28 person or entity who will act as the servicing agent in transactions pursuant
29 to Section 10237 (including the undersigned Broker if that is the case):
30 _____
31 _____
32
33 9. Total number of multilender notes arranged: _____
34
35 10. Total number of interests sold to investors on the
36 multilender's notes: _____
37
38 11. Inspection of trust account (before answering this question, review the
39 provisions of paragraph (3) of subdivision (k) of Section 10238).
40 CHECK ONLY ONE OF THE FOLLOWING:

() The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.

Amount of Multilender Payments Collected Last Fiscal Quarter: _____

Total Number of Investors Due Payments Last Fiscal Quarter: _____

() The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.

12. Signature. The contents of this notice are true and correct.

Date

Type Name of Broker

*Signature of ~~Broker~~ Broker, Designated Member,
Manager, or Officer of Limited Liability Broker, or of
Designated Officer of
Corporate Broker*

Type Name of Person(s) Signing This Notice

NOTE: AN AMENDED NOTICE MUST BE FILED BY THE BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE IN THE INFORMATION REQUIRED TO BE SET FORTH HEREIN.

(b) A broker or person who becomes the servicing agent for notes or interests sold pursuant to this article, upon which payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars (\$125,000) or the number of persons entitled to the payments exceeds 120, shall file the notice required by subdivision (a) with the commissioner within 30 days after becoming the servicing agent.

(c) All advertising employed for transactions under this article shall show the name of the broker and comply with Section 10235 of this code and Sections 260.302 and 2848 of Title 10 of the California Code of Regulations. Brokers and their agents are

1 cautioned that a reference to a prospective investor that a
2 transaction is conducted under this article may be deemed
3 misleading or deceptive if this representation may reasonably be
4 construed by the investor as an implication of merit or approval
5 of the transaction.

6 (d) Each parcel of real property directly securing the notes or
7 interests shall be located in this state, the note or notes shall not
8 by their terms be subject to subordination to any subsequently
9 created deed of trust upon the real property, and the note or notes
10 shall not be promotional notes secured by liens on separate parcels
11 of real property in one subdivision or in contiguous subdivisions.
12 For purposes of this subdivision, a promotional note means a
13 promissory note secured by a trust deed, executed on unimproved
14 real property or executed after construction of an improvement of
15 the property but before the first purchase of the property as so
16 improved, or executed as a means of financing the first purchase
17 of the property as so improved, that is subordinate, or by its terms
18 may become subordinate, to any other trust deed on the property.
19 However, the term “promotional note” does not include either of
20 the following:

21 (1) A note that was executed in excess of three years prior to
22 being offered for sale.

23 (2) A note secured by a first trust deed on real property in a
24 subdivision that evidences a bona fide loan made in connection
25 with the financing of the usual cost of the development in a
26 residential, commercial, or industrial building or buildings on the
27 property under a written agreement providing for the disbursement
28 of the loan funds as costs are incurred or in relation to the progress
29 of the work and providing for title insurance insuring the priority
30 of the security as against mechanic’s and materialmen’s liens or
31 for the final disbursement of at least 10 percent of the loan funds
32 after the expiration of the period for the filing of mechanic’s and
33 materialmen’s liens.

34 (e) The notes or interests shall be sold by or through a real estate
35 broker, as principal or agent. At the time the notes or interests are
36 originally sold or assigned, neither the broker nor an affiliate of
37 the broker shall have an interest as owner, lessor, or developer of
38 the property securing the loan, or any contractual right to acquire,
39 lease, or develop the property securing the loan. This provision
40 does not prohibit a broker from conducting the following

1 transactions if, in either case, the disclosure statement furnished
2 by the broker pursuant to subdivision (l) discloses the interest of
3 the broker or affiliate in the transaction and the circumstances
4 under which the broker or affiliate acquired the interest:

5 (1) A transaction in which the broker or an affiliate of the broker
6 is acquiring the property pursuant to a foreclosure under, or sale
7 pursuant to, a deed of trust securing a note for which the broker is
8 the servicing agent or that the broker sold to the holder or holders.

9 (2) A transaction in which the broker or an affiliate of the broker
10 is reselling from inventory property acquired by the broker pursuant
11 to a foreclosure under, or sale pursuant to, a deed of trust securing
12 a note for which the broker is the servicing agent or that the broker
13 sold to the holder or holders.

14 (f) (1) The notes or interests shall not be sold to more than 10
15 persons, each of whom meets one or both of the qualifications of
16 income or net worth set forth below and signs a statement, which
17 shall be retained by the broker for four years, conforming to the
18 following:

19
20 Transaction Identifier: _____

21 Name of Purchaser: _____ Date: _____

22 Check either one of the following, if true:

23 () My investment in the transaction does not exceed 10% of my net worth,
24 exclusive of home, furnishings, and automobiles.

25
26 () My investment in the transaction does not exceed 10% of my adjusted
27 gross income for federal income tax purposes for my last tax year or, in
28 the alternative, as estimated for the current year.

29 _____
30 Signature

31
32 (2) The number of offerees shall not be considered for the
33 purposes of this section.

34 (3) Spouses and their dependents, and an individual and his or
35 her dependents, shall be counted as one person.

36 (4) A retirement plan, trust, business trust, corporation, or other
37 entity that is wholly owned by an individual and the individual's
38 spouse or the individual's dependents, or any combination thereof,
39 shall not be counted separately from the individual, but the
40 investments of these entities shall be aggregated with those of the

individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, income, or both, of the individual.

(5) The “institutional investors” enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto, shall not be counted.

(6) A partnership, limited liability company, corporation, or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption from securities qualification is counted as one person.

(g) The notes or interests of the purchasers shall be identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser pursuant to this section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision does not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded pursuant to subdivisions (a) to (c), inclusive, of Section 10234.

(h) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of each parcel of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

- | | | |
|-----|---|-----|
| (A) | Single-family residence, owner occupied | 80% |
| (B) | Single-family residence, not owner occupied | 75% |

- 1 (C) Commercial properties and income-producing properties not
- 2 described in (B) or (E)..... 65%
- 3 (D) Single-family residentially zoned lot or parcel that has installed
- 4 offsite improvements including drainage, curbs, gutters,
- 5 sidewalks, paved roads, and utilities as mandated by the political
- 6 subdivision having jurisdiction over the lot or parcel 65%
- 7 (E) Land that produces income from crops, timber, or minerals..... 60%
- 8 (F) Land that is not income producing but has been zoned for (and
- 9 if required, approved for subdivision as) commercial or
- 10 residential development 50%
- 11 (G) Other real property 35%
- 12

13 (2) The percentage amounts specified in paragraph (1) may be
 14 exceeded when and to the extent that the broker determines that
 15 the encumbrance of the property in excess of these percentages is
 16 reasonable and prudent considering all relevant factors pertaining
 17 to the real property. However, in no event shall the aggregate
 18 principal amount of the notes or interests sold, together with the
 19 unpaid principal amount of any encumbrances upon the property
 20 senior thereto, exceed 80 percent of the current fair market value
 21 of improved real property or 50 percent of the current fair market
 22 value of unimproved real property, except in the case of a
 23 single-family zoned lot or parcel as defined in paragraph (1), which
 24 shall not exceed 65 percent of the current fair market value of that
 25 lot or parcel, plus the amount insured as specified in paragraph
 26 (1). A written statement shall be prepared by the broker that sets
 27 forth the material considerations and facts that the broker relies
 28 upon for his or her determination, which shall be retained as a part
 29 of the broker's record of the transaction. Either a copy of the
 30 statement or the information contained therein shall be included
 31 in the disclosures required pursuant to subdivision (l).

32 (3) A copy of the appraisal or the broker's evaluation, for each
 33 parcel of real property securing the notes or interests, shall be
 34 delivered to each purchaser. The broker shall advise purchasers
 35 of their right to receive a copy. For purposes of this paragraph,
 36 "appraisal" means a written estimate of value based upon the
 37 assembling, analyzing, and reconciling of facts and value indicators
 38 for the real property in question. A broker shall not purport to make
 39 an appraisal unless the person so employed is qualified on the basis
 40 of special training, preparation, or experience.

1 (4) For construction or rehabilitation loans, the term “current
2 market value” may be deemed to be the value of the completed
3 project if the following safeguards are met:

4 (A) An independent neutral third-party escrow holder is used
5 for all deposits and disbursements.

6 (B) The loan is fully funded, with the entire loan amount to be
7 deposited in escrow prior to recording of the deed or deeds of trust.

8 (C) A comprehensive, detailed draw schedule is used to ensure
9 proper and timely disbursements to allow for completion of the
10 project.

11 (D) The disbursement draws from the escrow account are based
12 on verification from an independent qualified person who certifies
13 that the work completed to date meets the related codes and
14 standards and that the draws were made in accordance with the
15 construction contract and draw schedule. For purposes of this
16 subparagraph, “independent qualified person” means a person who
17 is not an employee, agent, or affiliate of the broker and who is a
18 licensed architect, general contractor, structural engineer, or active
19 local government building inspector acting in his or her official
20 capacity.

21 (E) An appraisal is completed by a qualified and licensed
22 appraiser in accordance with the Uniform Standards of Professional
23 Appraisal Practice (USPAP).

24 (F) In addition to the transaction documentation required by
25 subdivision (i), the documentation shall include a detailed
26 description of actions that may be taken in the event of a failure
27 to complete the project, whether that failure is due to default,
28 insufficiency of funds, or other causes.

29 (G) The entire amount of the loan does not exceed two million
30 five hundred thousand dollars (\$2,500,000).

31 (5) If a note or an interest will be secured by more than one
32 parcel of real property, for the purpose of determining the
33 maximum amount of the note or interest, each security property
34 shall be assigned a portion of the note or interest that shall not
35 exceed the percentage of current market value determined by, and
36 in accordance with, the provisions of paragraphs (1) and (2).

37 (i) The documentation of the transaction shall require that (1)
38 a default upon any note or interest is a default upon all notes or
39 interests and (2) the holders of more than 50 percent of the recorded
40 beneficial interests of the notes or interests may govern the actions

1 to be taken on behalf of all holders in accordance with Section
2 2941.9 of the Civil Code in the event of default or foreclosure for
3 matters that require direction or approval of the holders, including
4 designation of the broker, servicing agent, or other person acting
5 on their behalf, and the sale, encumbrance, or lease of real property
6 owned by the holders resulting from foreclosure or receipt of a
7 deed in lieu of foreclosure. The terms called for by this subdivision
8 may be included in the deed of trust, in the assignment of interests,
9 or in any other documentation as is necessary or appropriate to
10 make them binding on the parties.

11 (j) (1) The broker shall not accept any purchase or loan funds
12 or other consideration from a prospective lender or purchaser, or
13 directly or indirectly cause the funds or other consideration to be
14 deposited in an escrow or trust account, except as to a specific loan
15 or note secured by a deed of trust that the broker owns, is
16 authorized to negotiate, or is unconditionally obligated to buy.

17 (2) All funds received by the broker from the purchasers or
18 lenders shall be handled in accordance with Section 10145 for
19 disbursement to the persons thereto entitled upon recordation of
20 the interests of the purchasers or lenders in the note and deed of
21 trust. No provision of this article shall be construed as modifying
22 or superseding applicable law regulating the escrow holder in any
23 transaction or the handling of the escrow account.

24 (3) The books and records of the broker or servicing agent, or
25 both, shall be maintained in a manner that readily identifies
26 transactions under this article and the receipt and disbursement of
27 funds in connection with these transactions.

28 (4) If required by paragraph (3) of subdivision (k), the review
29 by the independent certified public accountant shall include a
30 sample of transactions, as reflected in the records of the trust
31 account required pursuant to paragraph (1) of subdivision (k), and
32 the bank statements and supporting documents. These documents
33 shall be reviewed for compliance with this article with respect to
34 the handling and distribution of funds. The sample shall be selected
35 at random by the accountant from all these transactions and shall
36 consist of the following: (A) three sales made or 5 percent of the
37 sales made pursuant to this article during the period for which the
38 examination is conducted, whichever is greater, and (B) 10
39 payments processed or 2 percent of payments processed under this

1 article during the period for which the examination is conducted,
2 whichever is greater.

3 (5) For the purposes of this subdivision, the transaction that
4 constitutes a “sale” is the series of transactions by which a series
5 of notes of a maker, or the interests in the note of a maker, are sold
6 or issued to their various purchasers under this article, including
7 all receipts and disbursements in that process of funds received
8 from the purchasers or lenders. The transaction that constitutes a
9 “payment,” for the purposes of this subdivision, is the receipt of
10 a payment from the person obligated on the note or from some
11 other person on behalf of the person so obligated, including the
12 broker or servicing agent, and the distribution of that payment to
13 the persons entitled thereto. If a payment involves an advance paid
14 by the broker or servicing agent as the result of a dishonored check,
15 the inspection shall identify the source of funds from which the
16 payment was made or, in the alternative, the steps that are
17 reasonably necessary to determine that there was not a
18 disbursement of trust funds. The accountant shall inspect for
19 compliance with the following specific provisions of this section:
20 paragraphs (1), (2), and (3) of subdivision (j) and paragraphs (1)
21 and (2) of subdivision (k).

22 (6) Within 30 days of the close of the period for which the report
23 is made, or within any additional time as the commissioner may
24 in writing allow in a particular case, the accountant shall forward
25 to the broker or servicing agent, as the case may be, and to the
26 commissioner, the report of the accountant, stating that the
27 inspection was performed in accordance with this section, listing
28 the sales and the payments examined, specifying the nature of the
29 deficiencies, if any, noted by the accountant with respect to each
30 sale or payment, together with any further information as the
31 accountant may wish to include, such as corrective steps taken
32 with respect to any deficiency so noted, or stating that no
33 deficiencies were observed. If the broker meets the threshold
34 criteria of Section 10232, the report of the accountant shall be
35 submitted as part of the quarterly reports required under Section
36 10232.25.

37 (k) The notes or interests shall be sold subject to a written
38 agreement that obligates a licensed real estate broker, or a person
39 exempted from the licensing requirement for real estate brokers
40 under this chapter, to act as agent for the purchasers or lenders to

1 service the note or notes and deed of trust, including the receipt
2 and transmission of payments and the institution of foreclosure
3 proceedings in the event of a default. A copy of this servicing
4 agreement shall be delivered to each purchaser. The broker shall
5 offer to the lenders or purchasers the services of the broker or one
6 or more affiliates of the broker, or both, as servicing agent for each
7 transaction conducted pursuant to this article. The agreement shall
8 require all of the following:

9 (1) (A) That payments received on the note or notes be
10 deposited immediately to a trust account maintained in accordance
11 with this section and with the provisions for trust accounts of
12 licensed real estate brokers contained in Section 10145 and Article
13 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of
14 the California Code of Regulations.

15 (B) That payments deposited pursuant to subparagraph (A) shall
16 not be commingled with the assets of the servicing agent or used
17 for any transaction other than the transaction for which the funds
18 are received.

19 (2) That payments received on the note or notes shall be
20 transmitted to the purchasers or lenders pro rata according to their
21 respective interests within 25 days after receipt thereof by the
22 agent. If the source for the payment is not the maker of the note,
23 the agent shall inform the purchasers or lenders in writing of the
24 source for payment. A broker or servicing agent who transmits to
25 the purchaser or lenders the broker's or servicing agent's own
26 funds to cover payments due from the borrower but unpaid as a
27 result of a dishonored check may recover the amount of the
28 advances from the trust fund when the past due payment is
29 received. However, this article does not authorize the broker,
30 servicing agent, or any other person to issue, or to engage in any
31 practice constituting, any guarantee or to engage in the practice of
32 advancing payments on behalf of the borrower.

33 (3) If the broker or person who is or becomes the servicing agent
34 for notes or interests sold pursuant to this article upon which the
35 payments due during any period of three consecutive months in
36 the aggregate exceed one hundred twenty-five thousand dollars
37 (\$125,000) or the number of persons entitled to the payments
38 exceeds 120, the trust account or accounts of that broker or affiliate
39 shall be inspected by an independent certified public accountant
40 at no less than three-month intervals during the time the volume

1 is maintained. Within 30 days after the close of the period for
2 which the review is made, the report of the accountant shall be
3 forwarded as provided in paragraph (6) of subdivision (j). If the
4 broker is required to file an annual report pursuant to subdivision
5 (o) or pursuant to Section 10232.2, the quarterly report pursuant
6 to this subdivision need not be filed for the last quarter of the year
7 for which the annual report is made. For the purposes of this
8 subdivision, an affiliate of a broker is any person controlled by,
9 controlling, or under common control with the broker.

10 (4) Unless the servicing agent will receive notice pursuant to
11 Section 2924b of the Civil Code, the servicing agent shall file a
12 written request for notice of default upon any prior encumbrances
13 and promptly notify the purchasers or lenders of any default on
14 the prior encumbrances or on the note or notes subject to the
15 servicing agreement.

16 (5) The servicing agent shall promptly forward copies of the
17 following to each purchaser or lender:

18 (A) Any notice of trustee sale filed on behalf of the purchasers
19 or lenders.

20 (B) Any request for reconveyance of the deed of trust received
21 on behalf of the purchasers or lenders.

22 (I) The broker shall disclose in writing to each purchaser or
23 lender the material facts concerning the transaction on a disclosure
24 form adopted or approved by the commissioner pursuant to Section
25 10232.5, subject to the following:

26 (1) The disclosure form shall include a description of the terms
27 upon which the note and deed of trust are being sold, including
28 the terms of the undivided interests being offered therein, including
29 the following:

30 (A) In the case of the sale of an existing note:

31 (i) The aggregate sale price of the note.

32 (ii) The percent of the premium over or discount from the
33 principal balance plus accrued but unpaid interest.

34 (iii) The effective rate of return to the purchasers if the note is
35 paid according to its terms.

36 (iv) The name and address of the escrow holder for the
37 transaction.

38 (v) A description of, and the estimated amount of, each cost
39 payable by the seller in connection with the sale and a description

1 of, and the estimated amount of, each cost payable by the
2 purchasers in connection with the sale.

3 (B) In the case of the origination of a note:

4 (i) The name and address of the escrow holder for the
5 transaction.

6 (ii) The anticipated closing date.

7 (iii) A description of, and the estimated amount of, each cost
8 payable by the borrower in connection with the loan and a
9 description of, and the estimated amount of, each cost payable by
10 the lenders in connection with the loan.

11 (C) In the case of a transaction involving a note or interest
12 secured by more than one parcel of real property, in addition to
13 the requirements of subparagraphs (A) and (B):

14 (i) The address, description, and estimated fair market value of
15 each property securing the loan.

16 (ii) The amount of the available equity in each property securing
17 the loan after the loan amount to be apportioned to each property
18 is assigned.

19 (iii) The loan to value percentage for each property after the
20 loan amount to be apportioned to each property is assigned pursuant
21 to subdivision (h).

22 (2) A copy of the written statement or information contained
23 therein, as required by paragraph (2) of subdivision (h), shall be
24 included in the disclosure form.

25 (3) Any interest of the broker or affiliate in the transaction, as
26 described in subdivision (e), shall be included with the disclosure
27 form.

28 (4) When the particular circumstances of a transaction make
29 information not specified in the disclosure form material or
30 essential to keep the information provided in the form from being
31 misleading, and the other information is known to the broker, the
32 other information shall also be provided by the broker.

33 (5) If more than one parcel of real property secures the notes or
34 interests, the disclosure form shall also fully disclose any risks to
35 investors associated with securing the notes or interests with
36 multiple parcels of real property.

37 (m) The broker or servicing agent shall furnish any purchaser
38 of a note or interest, upon request, with the names and addresses
39 of the purchasers of the other notes or interests in the loan.

(n) No agreement in connection with a transaction covered by this article shall grant to the real estate broker, the servicing agent, or any affiliate of the broker or agent the option or election to acquire the interests of the purchasers or lenders or to acquire the real property securing the interests. This subdivision shall not prohibit the broker or affiliate from acquiring the interests, with the consent of the purchasers or lenders whose interests are being purchased, or the property, with the written consent of the purchasers or lenders, if the consent is given at the time of the acquisition.

(o) Each broker who conducts transactions under this article, or broker or person who becomes the servicing agent for notes or interests sold pursuant to this article, who meets the criteria of paragraph (3) of subdivision (k) shall file with the commissioner an annual report of a review of its trust account. The report shall be prepared and filed in accordance with subdivision (a) of Section 10232.2 and the rules and procedures thereunder of the commissioner. That report shall cover the broker's transactions under this article and, if the broker also meets the threshold criteria set forth in Section 10232, the broker's transactions subject to that section shall be included as well.

(p) Each broker conducting transactions pursuant to this article, or broker or person who becomes the servicing agent for notes or interests sold pursuant to this article, who meets the criteria of paragraph (3) of subdivision (k) shall file with the commissioner a report of the transactions that is prepared in accordance with subdivision (c) of Section 10232.2. If the broker also meets the threshold criteria of Section 10232, the report shall also include the transactions subject to that section. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.

SEC. 25. Section 10451 of the Business and Professions Code is amended to read:

10451. ~~All~~(a) *Except as provided in subdivision (b), all* money paid into the State Treasury and credited to the Real Estate Fund is hereby appropriated to be used by the commissioner in carrying out the provisions of this part and Chapter 1 of Part 2, including the payment of the salaries of the commissioner and his deputies, clerks and assistants. The money credited to the fund shall remain therein.

1 ***(b) (1) Notwithstanding any other law, the money in the Real***
2 ***Estate Fund that is attributable to administrative fines, civil***
3 ***penalties, and criminal penalties imposed by the bureau against***
4 ***a limited liability company broker, or to cost recovery by the***
5 ***bureau from enforcement actions and case settlements relating to***
6 ***a limited liability company broker, shall not be continuously***
7 ***appropriated.***

8 ***(2) The money in the Real Estate Fund that is not continuously***
9 ***appropriated pursuant to paragraph (1) shall be available for***
10 ***expenditure as provided in this part only upon appropriation by***
11 ***the Legislature.***

12 SEC. 26. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.